IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 53 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX

Versus

ASHOK RAJE GAEKWAD

Appearance:

1. WEALTH TAX REFERENCE No. 53 of 1989
MR DD VYAS, SR. COUNSEL for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 28/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. The Income-tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question of law for the opinion of this Court under the provisions of Section 27 of the Wealth-tax Act, 1957.

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the assessee (HUF) despite its being an HUF is entitled to benefit of section 7(4) of the Act in respect of property known as "Dhairya Prasad"? "

#. The assessee is a Hindu Undivided Family and the relevant assessment years were 1979-80 and 1981-82. The dispute centers around the valuation of the building known as "Dhairya Prasad", which belonged to the assessee-HUF. The case of the assessee was that the conditions mentioned in Section 7(4) were fulfilled and, therefore, the benefit of this provision should be allowed to the assessee in respect of the said house. The Wealth-tax Officer, however, negatived the claim on the ground that at no time in the past, the assessee had claimed this property to be self-occupied and that even though exemption was claimed in respect of this house property, it was under the provisions of Section 5 (1)(ivb) as a farm-house and that, in fact, in the year 1981-82, the assessee had claimed the property to be exempted under Section 2 (2)(b). The W.T.O. held that, on the principle of estoppel, the claim of the assessee for the benefit under Section 7(4) could not be entertained. It was further held that, the HUF was not a natural person and, therefore, it was not entitled to claim the benefit of Section 7(4) of the Act.

2.1 The Commissioner of Wealth-tax (Appeals), in the appeal preferred by the assessee held that, the principle of estoppel was not applicable against the provisions of taxation laws and legal claim could be made at any stage even if it was not made earlier. It was found that the property known as "Dhairya Prasad" was self-occupied by the assessee-HUF and that even the Departmental Valuation Officer had stated in his report that, the said house was wholly used for residential purpose. The appellate authority also held that the HUF was an "assessee" within the meaning of Section 7(4) and, therefore, was entitled to the benefits thereof, since the assessee, as defined under Section 2 (c) of the Act means a person by whom the wealth-tax or any other sum of money was payable under the Act. It was held that since the HUF was an assessable entity under the provisions of the said Act,

it was entitled to the benefits of Section 7(4). The WTO was, therefore, directed to give the said benefit to the assessee in respect of the house known as "Dhairya Prasad", used for self-occupation by substituting the value determined by the Valuation Officer by the fair market value as on 1.1.'71, in order to give consequential reliefs to the assessee in the relevant years.

2.2 The WTO challenged the decision of the CWT (Appeals), before the Tribunal and the Tribunal, upholding the decision of the CWT (Appeals) held that, the benefit of Section 7(4) was also available to an HUF provided other requirements of Section 7(4) were fulfilled. It was held that, such benefit cannot be taken away from the assessee solely on the ground that it had not claimed it earlier. It was also held that, even if the assessee had earlier claimed exemption under Section 5(1)(ivb) in respect of the property in question, declaring the same as a farm house, the assessee was not estopped from claiming the benefit under Section 7(4) in the subsequent years. It was held that there was no error in the direction of the CWT (Appeals) to the WTO to give the benefit of Section 7(4) in respect of the property in question to the assessee for all the three years under consideration by substituting the value determined by the Departmental Valuation Officer by the market value as on 1.1.71.

#. It is clear from the record that the house in question has been found by all the authorities to have been used for the residential purpose during the period relevant to the three assessment years. The Tribunal took note of the report of the Departmental Valuation Officer that the property in question was wholly occupied by the HUF. It was also found that the property was suitable for stay of the concerned family and it was not meant to be used simply as a farm house. The finding of the Tribunal and the authorities below it that the house in question was used by the assessee-HUF for residential purpose, based on the material that was produced on record, is not questioned before us. Even before the Tribunal it was not contended that the assessee had not used the property as a residence during the period of twelve months immediately preceding the valuation dates involved in the three appeals before the Tribunal, from which this Reference has arisen.

#. Section 5 of the said Act enumerates exemptions in respect of certain assets and, inter alia, provides that, wealth-tax shall not be payable by an assessee in respect

of the assets mentioned therein and such assets shall not be included in the net wealth of the assessee. Clause (ivb) of Section 5(1) (as in force at the relevant time), exempted "one building building or one group of buildings owned by a cultivator of, or receiver of rent or revenue out of, agricultural land" subject to the proviso that the building is on or in the immediate vicinity of the land and is required by the cultivator or the receiver of rent or revenue, by reason of his connection with the land as store house or for keeping livestock. The provision of Section 7 relates to determination of the value of the assets and provides that subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of the Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. The expression "valuation date" is defined in Section 2(q) in relation to any year for which an assessment is to be made under the Act, so as to mean the last date of the previous year as defined in Section 3 of the Income-tax Act, if an assessment were to be made under that Act for that year, subject to what has been mentioned in the proviso to Clause (q) of Section 2. In sub-section (4) of Section 7, it has been provided that notwithstanding anything contained in sub-section (1), value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may, at the option of the assessee, be taken to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date next following the date on which he became the owner of the house, or on the valuation date relevant to the assessment year commencing on the first date of April, 1971, whichever valuation date is later, provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this sub-section shall apply only in respect of one such houses which the assessee may, at his option specify in this behalf in the return of the net wealth.

#. As noted above, the assessee had specified his option under Section 7(4) in respect of its house known as "Dhairya Prasad". It will be seen from the provisions of Section 5 and Section 7 that they operate in different fields. While Section 5 deals with exemption in respect of the assets mentioned therein from the payment of wealth-tax and their inclusion in the net wealth of the assessee, Section 7 has a bearing only on the question of

valuation of an asset. It is obvious that if an asset is totally exempted from the wealth-tax and if not required to be included in the net wealth of the assessee under Section 5, there would arise no question of valuation of such an asset unless necessary in the context of any particular exemption. In cases where an assessee has an option to specify one of the houses belonging to the assessee which are exclusively used by him for the residential purposes as per the proviso to sub-section (4) of Section 7, the question of valuation of such house is to be resolved as per the provisions of sub-section (4) of Section 7. The fact that in respect of the same house, exemption was earlier availed of under the provisions of Section 5, will not preclude the assessee from claiming the benefit of valuation under sub-section (4) of Section 7, when he opts to specify such house which he uses for the residential purposes for the purpose of the valuation under the proviso to sub-section (4) of Section 7.

#. In the present case a finding of fact is reached by the Tribunal, confirming the finding of the CWT (Appeals) that, the house in question was exclusively used by the assessee for residential purposes, and, in view of the assessee having opted to specify this house for the purpose of valuation under sub-section (4) of Section 7, the fact that in the past assessment years, the assessee had claimed an exemption in respect thereof under Section 5(1)(ivb), was hardly relevant and such exemptions availed of in the past in respect of that house did not preclude the assessee from exercising its option under the proviso to sub-section (4) of Section 7 for the purpose of claiming the benefit of sub-section (4) as on the valuation date envisaged therein. The Tribunal was, therefore, right in holding that the assessee-HUF was not estopped from claiming the benefit of the provisions of sub-section (4) of Section 7 of the Act and we are unable to accede to the contrary contention canvassed on behalf of the Revenue.

#. The contention of the learned Senior Counsel for the Revenue that the HUF cannot claim the benefit of the provisions of sub-section (4) of Section 7, runs counter to the provisions of the said Act. Under sub-section (4) of Section 7, a benefit is intended in respect of the house belonging to the assessee and exclusively used by him for the residential purposes. The provision does not exclude any particular category of an assessee. The word "assessee" as defined in Section 2 (c) means a person by whom wealth-tax or any other sum of money is payable under the Act, and includes:- (i) every person in respect

of whom any proceeding under the Act has been taken for the determination of wealth-tax payable by him or by any other person or the amount of refund due to him or such other person; (ii) every person who is deemed to be an assessee under the Act; (iii) every person who is deemed to be an assessee in default under the Act. The charging provision of Section 3, in terms, refers to HUF when it lays down that, subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing from 1st day of April, 1957, a tax (referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu Undivided Family and Company at the rate or at the rates specified in Schedule-I. Thus, HUF is recognized as a legal entity for the purpose of assessment under this Act. Provisions are made for assessment in special cases in Chapter V of the Act, inter alia, as regards the assessment after partition of an HUF in Section 20 and 20A. It is well settled legal position that HUF is one of the assessable legal entities under Section 3 of the Act (See N.V. Narendranath v.CWT, Andhra Pradesh, 1969 (1) SCC 748). Since the HUF is an assessee, within the meaning of Section 3, chargeable to wealth-tax and because, it can own property such as a house, it follows that where the assessee is HUF it can claim the benefit of sub-section (4) of Section 7, which does not in any way exclude HUF.

#. For the foregoing reasons, we hold that the Tribunal was right in holding that the assessee, even though HUF, was entitled to the benefit of Section 7(4) of the Act in respect of the property known as "Dhairya Prasad". The question referred to this Court is, therefore, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[K.M. MEHTA, J.]
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